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HOUSE BILL 1229

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives O'Brien and Warnick

Read first time 01/15/09. Referred to Committee on Judiciary.

1            AN ACT Relating to an authorization directing the disposition of  
2 personal property; and amending RCW 59.18.310.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 59.18.310 and 1991 c 220 s 1 are each amended to read  
5 as follows:

6            (1) If the tenant defaults in the payment of rent and reasonably  
7 indicates by words or actions the intention not to resume tenancy, the  
8 tenant shall be liable for the following for such abandonment:  
9 PROVIDED, That upon learning of such abandonment of the premises the  
10 landlord shall make a reasonable effort to mitigate the damages  
11 resulting from such abandonment:

12            ~~((1))~~ (a) When the tenancy is month-to-month, the tenant shall be  
13 liable for the rent for the thirty days following either the date the  
14 landlord learns of the abandonment, or the date the next regular rental  
15 payment would have become due, whichever first occurs.

16            ~~((2))~~ (b) When the tenancy is for a term greater than month-to-  
17 month, the tenant shall be liable for the lesser of the following:

18            ~~((a))~~ (i) The entire rent due for the remainder of the term; or

1       (~~(b)~~) (ii) All rent accrued during the period reasonably  
2 necessary to reread the premises at a fair rental, plus the difference  
3 between such fair rental and the rent agreed to in the prior agreement,  
4 plus actual costs incurred by the landlord in rereading the premises  
5 together with statutory court costs and reasonable attorney's fees.

6       In the event of such abandonment of tenancy and an accompanying  
7 default in the payment of rent by the tenant, the landlord may  
8 immediately enter and take possession of any property of the tenant  
9 found on the premises and may store the same in any reasonably secure  
10 place. A landlord shall make reasonable efforts to provide the tenant  
11 with a notice containing the name and address of the landlord and the  
12 place where the property is stored and informing the tenant that a sale  
13 or disposition of the property shall take place pursuant to this  
14 section, and the date of the sale or disposal, and further informing  
15 the tenant of the right under RCW 59.18.230 to have the property  
16 returned prior to its sale or disposal. The landlord's efforts at  
17 notice under this subsection shall be satisfied by the mailing by first  
18 class mail, postage prepaid, of such notice to the tenant's last known  
19 address and to any other address provided in writing by the tenant or  
20 actually known to the landlord where the tenant might receive the  
21 notice. The landlord shall return the property to the tenant after the  
22 tenant has paid the actual or reasonable drayage and storage costs  
23 whichever is less if the tenant makes a written request for the return  
24 of the property before the landlord has sold or disposed of the  
25 property. After forty-five days from the date the notice of such sale  
26 or disposal is mailed or personally delivered to the tenant, the  
27 landlord may sell or dispose of such property, including personal  
28 papers, family pictures, and keepsakes. The landlord may apply any  
29 income derived therefrom against moneys due the landlord, including  
30 actual or reasonable costs whichever is less of drayage and storage of  
31 the property. If the property has a cumulative value of fifty dollars  
32 or less, the landlord may sell or dispose of the property in the manner  
33 provided in this section, except for personal papers, family pictures,  
34 and keepsakes, after seven days from the date the notice of sale or  
35 disposal is mailed or personally delivered to the tenant: PROVIDED,  
36 That the landlord shall make reasonable efforts, as defined in this  
37 section, to notify the tenant. Any excess income derived from the sale  
38 of such property under this section shall be held by the landlord for

1 the benefit of the tenant for a period of one year from the date of  
2 sale, and if no claim is made or action commenced by the tenant for the  
3 recovery thereof prior to the expiration of that period of time, the  
4 balance shall be the property of the landlord, including any interest  
5 paid on the income.

6 (2) When there is a periodic tenancy, the tenant shall be permitted  
7 to make a directive to a third person to remove all personal property  
8 of the tenant in the event of the tenant's death or demise. The  
9 directive shall be in the following format:

10 **AUTHORIZATION TO ENTER PREMISES AND**  
11 **DIRECTIVE FOR DISPOSITION OF PERSONAL PROPERTY**  
12 **("Authorization")**

13 WHEREAS, . . . . . (hereinafter referred to as "Landlord") is  
14 charged with the statutory directives as set forth in Title 11 RCW et  
15 seq. relating to disposition and release of personal belongings in the  
16 units of deceased tenants; and

17 WHEREAS, The current policy of Landlord is to require that, once a  
18 tenant is deceased, no persons are authorized to enter the tenant's  
19 unit and remove personal property and household goods (other than  
20 burial clothes, a pet, the deceased resident's will, or any perishable  
21 items) without a certified copy of letters testamentary or an affidavit  
22 of successor as described in RCW 11.62.010, or otherwise complying with  
23 the directive set forth in Title 11 RCW; and

24 WHEREAS, The undersigned tenant (hereinafter referred to as  
25 "Tenant") wishes to designate a named individual to enter Tenant's unit  
26 following his or her death and remove all household goods and personal  
27 property therefrom without being required to obtain the aforementioned  
28 letters testamentary or an affidavit of successor, or otherwise comply  
29 with the provisions set forth in Title 11 RCW; and

30 WHEREAS, Tenant and the named individual are willing to release and  
31 hold Landlord and its agents harmless from any and all claims and  
32 liabilities which relate to the actions or omissions of the named  
33 individual. In consideration of these recitals, which are a material  
34 part hereof, and other good and valuable consideration to and benefits  
35 of Tenant and the named individual hereunder, the parties agree as  
36 follows:

37 1. In the event of Tenant's death, Tenant hereby authorizes

1 Landlord to allow access to Tenant's unit for the purposes of  
2 removing all personal property and household goods therefrom to  
3 the following named individual: . . . . .

4 2. The named individual may or may not be consistent with the  
5 personal representative named in Tenant's last will and  
6 testament. If Landlord is presented with a certified copy of  
7 letters testamentary, letters of administration, or an  
8 affidavit of successor by an individual other than the named  
9 individual prior to the named individual removing all personal  
10 property and household goods from Tenant's unit, Landlord shall  
11 allow access to Tenant's unit to that individual rather than to  
12 the named individual and shall be absolved of any liability for  
13 access by such individual or the named individual.

14 3. Tenant hereby assumes the risk that the named individual  
15 will not carry out the wishes of Tenant or the terms of any  
16 last will and testament currently in existence or which might  
17 be in existence at the time of Tenant's death or otherwise as  
18 provided by the laws of the state of Washington.

19 4. In consideration of Landlord revising its current policy,  
20 accepting Tenant's express directive, provided in this  
21 authorization, tenant, and all successors, heirs, and assigns  
22 thereof, hereby release and forever discharge Landlord from any  
23 claims, demands, actions, damages, costs, expenses, and causes  
24 of action of any character which may arise from this  
25 authorization or the actions or omissions of the named  
26 individual. This release and discharge shall be fully binding  
27 upon Tenant, the named individual, their heirs, assigns,  
28 successors, and their estates.

29 5. Tenant and the named individual hereby agree to indemnify,  
30 defend, and hold harmless Landlord and its agents from any  
31 claims or actions made as a result of Landlord carrying out the  
32 terms of this authorization.

33 6. Tenant acknowledges his or her right to seek independent  
34 counsel relative to the matters contained herein and further  
35 acknowledges this directive is made solely at Tenant's request  
36 without any suggestion from Landlord, undue influence, threat  
37 of harm, or duress.

1        7. This authorization is not designed to be a substitute for  
2        Tenant's last will and testament, does not transfer ownership  
3        of any of Tenant's property, but merely provides that the named  
4        individual will be the custodian of Tenant's property hereunder  
5        at the risk of Tenant, his or her estate and successors, heirs,  
6        and assigns.

7        8. This authorization may be executed in several counterparts  
8        and all so executed shall constitute one authorization, binding  
9        on all the parties hereto, even though all the parties are not  
10       signatories to the original or the same counterpart.

11       9. Facsimile transmission of any signed original document, and  
12       the retransmission of any signed facsimile transmission, shall  
13       be the same as delivery of the original signed document.

14       DATED this . . . . day of . . . ., 20--.

15	.....	.....
16	<u>Tenant Signature</u>	<u>Witness Signature</u>
17		
18	.....	.....
19	<u>Printed Name</u>	<u>Printed Name</u>
20		
21	.....	.....
22	<u>Address</u>	<u>Address</u>
23		
24	.....	.....
25	<u>City, State</u>	<u>City, State</u>

26       DATED this . . . . day of . . . ., 20--.

27       Copy Received:

28       ("Landlord")

1 By: .....  
2 Named Individual Signature  
3  
4 .....  
5 Printed Name Printed Name  
6  
7 Date: .....  
8 Address  
9  
10 .....  
11 City, State, Zip  
12  
13 .....  
14 Date of Birth

--- END ---